

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 689 Workers' Compensation Benefits for First Responders

SPONSOR(S): Giallombardo and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1066

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	15 Y, 0 N	Villa	Toliver
2) Insurance & Banking Subcommittee			
3) State Administration & Technology Appropriations Subcommittee			
4) State Affairs Committee			

SUMMARY ANALYSIS

Workers' compensation laws require employers to pay medical and indemnity benefits if an employee suffers an accidental injury or death arising out of work performed in the course and scope of their employment. While mental or nervous injuries without an accompanying physical injury requiring medical treatment are typically not compensable, Florida law provides such benefits to first responders, such as law enforcement officers, firefighters, emergency medical technicians, and paramedics. However, without an accompanying physical injury, the compensation only applies to medical treatment and not indemnity benefits.

In addition to workers' compensation for mental or nervous injuries, current law provides indemnity benefits for posttraumatic stress disorder (PTSD) suffered by a first responder regardless of whether the first responder's PTSD is accompanied by a physical injury requiring medical treatment. First responders qualify for PTSD disability benefits if he or she, while acting within the course and scope of employment, experiences a qualifying event (e.g., directly witnessing a death due to grievous bodily harm) and is subsequently diagnosed with PTSD as a result. First responders must provide the employer with notice of injury or death within 90 days of the qualifying event or manifestation of the disorder, whichever is later; however, the claim is barred if not properly noticed within one year of the qualifying event that supports the claim.

The bill provides that the time for notice of injury or death in the case of compensable PTSD is 90 days and is measured from the qualifying event that supports the claim or the diagnosis, rather than the manifestation, of the disorder, whichever is later. The bill further provides that the PTSD workers' compensation claim is barred if not properly noticed within one year of the qualifying event that supports the claim or the diagnosis of the disorder, whichever is later.

The bill will likely have a significant negative fiscal impact on state government and local governments. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Workers' Compensation System

Current law requires employers to provide medical and indemnity benefits if an employee suffers an accidental injury or death arising out of work performed in the course and the scope of the employment.¹ Generally, employers may secure coverage from an authorized carrier, qualify as a self-insurer,² or purchase coverage from the Workers' Compensation Joint Underwriting Association, the insurer of last resort.³ The Department of Financial Services (DFS) administers the workers' compensation system.

Workers' compensation is the injured employee's remedy for "compensable" workplace injuries.⁴ A work-related accident must be the major contributing cause of any resulting injury or illness, meaning that the cause must be more than 50 percent responsible for the injury as compared to all other causes combined, as demonstrated by medical evidence only.⁵ For work-related injuries, employees are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prostheses, for as long as the nature of the injury and process of recovery requires.⁶ Indemnity benefits, on the other hand, only become payable to employees who are disabled for at least eight days due to a compensable workplace injury,⁷ and are generally payable at 66.67 percent of the employee's average weekly wage,⁸ up to the maximum weekly benefit established by law.⁹ Indemnity benefits fall into one of four categories: temporary partial disability, temporary total disability, permanent partial disability, or permanent total disability and are payable as follows:

- Temporary partial disability and temporary total disability benefits are payable for up to a combined total of 260 weeks.¹⁰
- Permanent partial disability benefits are payable as impairment income benefits that are provided for a variable number of weeks depending upon the value of the injured worker's permanent impairment rating pursuant to a statutory formula.¹¹
- Permanent total disability benefits are payable until the age of 75, unless the work-related accident occurs after the worker's 70th birthday, in which case the benefit is paid for no more than five years.¹²

General Compensability for Mental or Nervous Injuries

Generally, mental or nervous injuries without an accompanying physical injury requiring medical treatment are not compensable.¹³ In addition, a mental or nervous injury occurring as a manifestation of

¹ Section 440.09(1), F.S.

² Section 440.38, F.S.

³ Section 627.311(5)(a), F.S.

⁴ "Compensable" means a determination by a carrier or judge of compensation claims that a condition suffered by an employee results from an injury arising out of and in the course of employment. Section 440.13(1)(d), F.S.

⁵ Section 440.09(1), F.S.

⁶ Section 440.13(2)(a), F.S.

⁷ Section 440.12(1), F.S.

⁸ An injured worker's average weekly wage is an amount equal to one-thirteenth of the total amount of wages earned during the 13 weeks immediately preceding the compensable accident pursuant to s. 440.14(1), F.S.

⁹ Section 440.15(1)-(4), F.S.

¹⁰ The Florida Supreme Court and the First District Court of Appeal in two cases found the general limitation on temporary indemnity benefits unconstitutional in circumstances where the injured worker had reached the 104-week limit on benefits, but was unable to return to work. The courts invalidated the 104-week limitation and replaced it with the previous statutory limit of 260 weeks. *Westphal v. City of St. Petersburg*, 194 So. 3d 311 (Fla. 2016); *Jones v. Food Lion, Inc.*, 202 So. 3d 964 (Fla. 1st DCA 2016).

¹¹ Section 440.15(3), F.S.

¹² Section 440.15(1)(b), F.S.

¹³ Section 440.093(1), F.S.

a compensable physical injury must be demonstrated by clear and convincing medical evidence and the compensable physical injury must be the major contributing cause of the mental or nervous injury.¹⁴ The law also limits the duration of temporary indemnity benefits for a compensable mental or nervous injury to no more than six months after the employee reaches maximum medical improvement (MMI)¹⁵ and limits the permanent psychiatric impairment rating to one percent.¹⁶

Compensability for Mental or Nervous Injuries of First Responders

Although mental and nervous injuries are generally not compensable under workers' compensation laws, Florida law provides that medical benefits for first responders who experience a mental or nervous injury without an accompanying physical injury are compensable. The term "first responder" is defined as a law enforcement officer,¹⁷ a firefighter,¹⁸ or an emergency medical technician or paramedic¹⁹ employed by state or local government.²⁰ Further, a volunteer law enforcement officer, firefighter, or emergency medical technician or paramedic engaged by the state or a local government is considered a first responder of the state or local government.²¹ However, while medical treatment is covered, first responders without an accompanying physical injury may not receive indemnity benefits.²² In addition, first responders are not subject to the six month cap after reaching MMI for temporary indemnity benefits or the one-percent permanent impairment rating for psychiatric injuries.²³

General Compensability of Occupational Diseases

The worker's compensation law provides medical and indemnity benefits for workers who were accidentally injured while acting in the course and scope of their employment. This typically involves an accidental injury, e.g., cuts, abrasions, broken bones, and soft-tissue damage; however, the law also provides benefits for workers who develop occupational diseases due to their employment.²⁴ Occupational diseases generally do not involve a traumatic event that cause obvious disruption to the body requiring immediate medical attention. Lung disease, hypertension, hearing loss, dermatitis, and certain communicable diseases, such as hepatitis, are examples of occupational diseases that may be compensable if certain conditions are met. These diseases develop due to exposure to airborne particles, severe physical stress, excessive noise, irritants, or pathogens in the workplace.

For the purpose of the workers' compensation law, the term "occupational disease" means only a disease that is due to causes and conditions that are characteristics of and peculiar to a particular trade, occupation, process, or employment, and excludes all ordinary diseases of life to which the general public is exposed, unless the incidence of the disease is substantially higher in the particular trade, occupation, process, or employment than in the general public. Such diseases are compensable if there are epidemiological studies showing that exposure to the specific substance involved, at the

¹⁴ Section 440.993(2), F.S.

¹⁵ Temporary indemnity benefits, known as temporary total disability and temporary partial disability benefits, are paid while an injured worker has not yet reached maximum medical improvement and is either unable to earn a wage or unable to earn the same or greater wage as prior to the compensable injury. Following maximum medical improvement, permanent total disability or permanent impairment benefits may be paid. Section 440.15, F.S.

¹⁶ Section 440.15(3)(c), F.S.

¹⁷ "Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. Section 943.10(1), F.S.

¹⁸ "Firefighter" means an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal within the Department of Financial Services. Section 633.102(9), F.S.

¹⁹ "Emergency medical technician" means a person who is certified by the Department of Health to perform basic life support pursuant to this part. The term "paramedic" means a person who is certified by the Department of Health to perform basic and advanced life support pursuant to this part. Section 401.23, F.S.

²⁰ Section 112.1815(1), F.S.

²¹ *Id.*

²² Section 112.1815(2)(a)3., F.S.

²³ *Id.*

²⁴ Section 440.151, F.S.

levels to which the employee was exposed, may cause the precise disease sustained by the employee.²⁵

Because occupational diseases differ from the more common types of workers' compensation claims, there are special provisions governing occupational disease claims. These include the following:

- The disease must result from the nature of the employment²⁶ while engaged in such employment.
- The nature of the employment must be the major contributing cause²⁷ of the disease and the disease must be a major contributing cause of the need for treatment, each of which must be shown by medical evidence only based on physical examination and diagnostic testing.
- Causation, including sufficient exposure to a specific harmful substance shown to be present in the workplace, must be proven by clear and convincing evidence.
- If the occupational disease is aggravated by a non-compensable disease or infirmity, then the indemnity benefits must be reduced in proportion to the percentage of aggravation.
- Death benefits are only available to surviving spouses and living and unborn dependent children, if their relationship to the decedent existed prior to or when an injured worker became disabled²⁸ (i.e., became unable to earn the wages being received at the time of last exposure).
- Only the employer and its insurer, if the employer is not self-insured, at the time of last exposure is liable for benefits for an occupational disease (i.e., no other employer or insurer is required to contribute to funding the claim costs).
- The notice of injury or death must be filed within 90 days of the injurious exposure or manifestation of the illness, rather than the general 30-day notice requirement.
- In the case of death, the death must have occurred within 350 weeks (6.73 years) after last exposure.
- If the employer asked, at the time of hiring, whether the employee had a history of disability, lay-offs, or being compensated in damages or otherwise because of the claimed occupational disease, and the employee falsely represented himself or herself in writing about such history, then indemnity benefits due to the disease are prohibited.²⁹

Compensability of Occupational Diseases of First Responders

For cases involving occupational disease, both causation and sufficient exposure to a specific harmful substance shown to be present in the workplace must be proven by a preponderance of the evidence.³⁰ In addition, for purposes of determining compensability for exposure to toxic substances involving a first responder, an injury or disease caused by the exposure to a toxic substance is not compensable, unless a preponderance of the evidence establishes that exposure to the specific substance involved, at the levels to which the first responder was exposed, can cause the injury or disease.³¹ In the case of an adverse reaction to a smallpox vaccine, there is no evidentiary standard and the injury is deemed compensable.³²

Compensability of Posttraumatic Stress Disorder of First Responders

Current law allows indemnity benefits for a first responder with posttraumatic stress disorder (PTSD) without requiring a link to a compensable physical injury.³³ These benefits are provided in addition to

²⁵ Section 440.151(2), F.S.

²⁶ "Nature of employment" means that in the occupation in which the employee was so engaged there is attached a particular hazard of such disease that distinguishes it from the usual run of occupations, or the incidence of such disease is substantially higher in the occupation in which the employee was so engaged than in the usual run of occupations. Section 440.151(1), F.S.

²⁷ The "major contributing cause" is the cause which is more than 50 percent responsible for the injury as compared to all other causes combined for which treatment or benefits are sought. Section 440.09(1), F.S.

²⁸ "Disability" means incapacity because of the injury to earn in the same or any other employment the wages which the employee was receiving at the time of the injury. Section 440.02(13), F.S. This definition also applies to the term "disabled" and "disablement."

²⁹ Section 440.151, F.S.

³⁰ Section 112.1815(2)(b), F.S.

³¹ Section 112.1815(2)(a)1., F.S. For workers not employed as a first responder, the evidentiary standard is clear and convincing evidence. Section 440.02(1), F.S.

³² Section 112.1815(2)(a)2., F.S.

³³ Section 112.1815(5)(c), F.S. In addition, the benefits are not subject to apportionment due to preexisting PTSD or the one-percent limitation on permanent psychiatric impairment benefits. *Id.*

the medical benefits currently allowed for mental and nervous injuries for claims where no physical injury has occurred. PTSD is deemed an “occupational disease,” which means all practices and procedures of ch. 440, F.S., apply to the claim, except as otherwise provided. Accordingly, current law applies regarding:

- The “major contributing cause,” which must be shown by medical evidence only, based on physical examination findings and diagnostic testing; and “disablement,” which is a reduced earning capacity due to a compensable injury;
- The first responder’s spouse and living and unborn dependents at the time of the first responder’s disablement may receive death and other allowable benefits; however, death benefits are limited to deaths occurring within 350 weeks (6.73 years) of last witnessing a qualifying event causing the PTSD;
- There is no contribution of claim costs among current and former employers (i.e., only the employer at the time of the last qualifying event that caused or aggravated the PTSD is liable); and
- No benefits are due if, upon employment, the first responder falsely represented himself or herself in writing as not being previously disabled, laid off, or compensated because of PTSD.

First responders qualify for PTSD disability benefits if the disorder can be demonstrated by clear and convincing evidence and the first responder:

- Was acting within the course and scope of employment; and
- Is diagnosed, following an examination by the employer’s or carrier’s authorized treating psychiatrist, with PTSD due to:
 - Seeing a deceased minor;³⁴
 - Directly witnessing³⁵ the death of a minor or an injury to a minor who subsequently died prior to or upon arrival at a hospital emergency department;
 - Participating in the physical treatment of or manually transporting³⁶ an injured minor who subsequently died prior to or upon arrival at a hospital emergency department;
 - Seeing someone who died due to grievous bodily harm of a nature that shocks the conscience;³⁷
 - Directly witnessing a death due to:
 - Grievous bodily harm of a nature that shocks the conscience, including suicide; or
 - Homicide, including murder, mass killing, manslaughter, self-defense, misadventure, or negligence;
 - Directly witnessing an injury, including an attempted suicide, to a person who suffered grievous bodily harm of a nature that shocks the conscience if the injured person subsequently died prior to or upon arrival at a hospital emergency department;
 - Participating in the physical treatment of an injury, including an attempted suicide, to a person who suffered grievous bodily harm of a nature that shocks the conscience if the injured person subsequently died prior to or upon arrival at a hospital emergency department; or
 - Manually transporting a person who was injured, including by attempted suicide, and suffered grievous bodily harm of a nature that shocks the conscience if the injured person subsequently died prior to or upon arrival at a hospital emergency department.³⁸

Current law requires first responders to provide the employer with notice of injury or death within 90 days of the qualifying event or manifestation of the disorder, whichever is later; however, the claim is barred if not properly noticed within one year of the qualifying event that supports the claim.³⁹

³⁴ “Minor” includes any person who has not attained the age of 18 years. Section 1.01(13), F.S.

³⁵ “Directly witnessing” means to see or hear for oneself. Section 112.1815(5)(e)1., F.S.

³⁶ “Manually transporting” means to perform physical labor to move the body of a wounded person for his or her safety or medical treatment.” Section 112.1815(5)(e)2., F.S.

³⁷ The following injuries qualify as grievous bodily harm of a nature that shocks the conscience: decapitation; degloving; enucleation; evisceration; impalement; severance; third degree burns on nine percent or more of the body; and exposure of one or more of the following internal organs: brain; heart; intestines; kidneys; liver; or lungs. Rule 69L-3.009, F.A.C.

³⁸ Section 112.1815(5)(a), F.S.

³⁹ Section 112.1815(5)(d), F.S.

Effects of the Bill

The bill provides that the time for notice of injury or death in the case of compensable PTSD is 90 days and is measured from the qualifying event that supports the claim or the diagnosis, rather than the manifestation, of the disorder, whichever is later. The bill further provides that the PTSD workers' compensation claim is barred if not properly noticed within one year of the qualifying event that supports the claim or the diagnosis of the disorder, whichever is later.

B. SECTION DIRECTORY:

Section 1 amends s. 112.1815, F.S., relating to special provisions for employment-related accidents and injuries of first responders.

Section 2 provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on the private sector as a result of higher costs in some workers' compensation claims. However, this impact should be minimal, as the bill would only extend the time for notice of injury or death in the case of compensable PTSD for first responders in the public sector.

D. FISCAL COMMENTS:

The bill provides the time for notice of injury or death in the case of compensable PTSD is measured from the qualifying event that supports the claim or the diagnosis, rather than the manifestation, of the disorder, whichever is later. Accordingly, more state and local government employees may qualify for PTSD workers' compensation benefits. The fiscal impact on state government and local governments is unknown at this time, but likely significant. DFS, in its agency bill analysis, states that local government's workers' compensation costs will increase and that the impact to state government could be significant.⁴⁰ DFS further reports that since 2018, when PTSD indemnity benefits without an accompanying physical injury were authorized for first responders, approximately 50 such claims have been paid at an average of \$42,326.09 per claim for a total of \$2,116,304.50.⁴¹

⁴⁰ DFS Agency Bill Analysis for HB 689, on file with the Government Operations Subcommittee.

⁴¹ Email from Austin Stowers, Director of Legislative Affairs, Department of Financial Services, RE: PTSD Data (January 12, 2022), on file with the Government Operations Subcommittee.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill provides the time for notice of injury or death in the case of compensable PTSD for first responders is measured by the qualifying event that supports the claim or the diagnosis, rather than the manifestation, of the disorder, whichever is later; however, an exemption may apply if the fiscal impact of the bill is insignificant. In addition, an exception may apply because all similarly situated state and local government employers of first responders are required to provide the workers' compensation benefits.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require rulemaking nor confer or alter an agency's rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.